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PATENT
Docket No. 2338.2.2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: Bernhard Dohrmann
Serial No.: 09/981,287
Filed: Oct. 18, 2001
For: **APPARATUS AND METHOD FOR DELIVERY OF
INSTRUCTIONAL INFORMATION**
Examiner: Nikolai A. Gishnock

Group Art
Unit: 3715

APPELLANT'S REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
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The USPTO received Appellant's timely Notice of Appeal on December 30, 2008, which was filed in response to the Office Action mailed September 30, 2008. Appellant appeals the rejection of pending Claims 1-4, 7, 11, 12, and 42-78. An Appeal Brief was timely within two months of the filing of the notice of appeal. The Appellant received a Notification of Non-Compliant Appeal Brief mailed March 25, 2009 and an amended Appeal Brief was timely filed in response on March 30, 2009 to correct the Status of Claims section. An Examiner's Answer

[hereinafter “Answer”] was mailed on June 22, 2009. This Reply Brief is in response to the Examiner’s Answer.

This Brief is being filed under the provisions of 37 C.F.R. § 41.37. The filing fee set forth in 37 C.F.R. § 41.20(b)(2) was submitted previously.

1. REAL PARTY IN INTEREST

The real party in interest is the inventor, Bernhard Dohrmann. The Examiner acknowledged this statement in the Answer.

2. RELATED APPEALS AND INTERFERENCES

There are no related appeals, interferences, or judicial proceedings. The Examiner stated in the Answer that he is unaware of any related appeals, interferences, or judicial proceedings.

3. STATUS OF CLAIMS

The Examiner stated in the Answer that the status of the claims stated in the Appeal Brief is correct.

4. STATUS OF AMENDMENTS

The Examiner stated in the Answer that the status of the amendments contained in the Appeal Brief is correct.

5. SUMMARY OF CLAIMED SUBJECT MATTER

The Examiner stated in the Answer that the summary of claimed subject matter contained in the Appeal Brief is correct.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner stated in the Answer that the grounds of rejection to be reviewed on appeal as stated in the Appeal Brief are correct.

7. CLAIMS APPENDIX

The Examiner stated in the Answer that the copy of the appealed claims contained in the Appendix to the Appeal Brief is correct.

8. EVIDENCE RELIED UPON

The Examiner stated that the evidence relied upon for the Answer is U.S. Patent No. 5,850,250 to Konopka, et al., U.S. Patent No. 6,034,652 to Freiburger et al., and U.S. Patent No. 6,647,119 to Slezak. The Appellant agrees.

9. GROUNDS OF REJECTION

The Appellant notes that the grounds of rejection listed in the Answer appear to be the same as the grounds for rejection in the Office Action mailed on September 30, 2008.

10. REPLY TO EXAMINER'S ANSWER

The Appellant renews the arguments set forth in the Appeal Brief and responds as follows to the Examiner's Answer:

I. Konopka and Freiburger fail to teach each element of Claims 1-4, 7, 11, 12, and 42-78.

Appellant respectfully agrees with the Examiner's statement that the Konopka reference fails to teach "displaying classroom images and materials on random displays, and at random intervals and for random durations." Answer at pg. 16. As set forth in the Appeal Brief, Appellant further respectfully submits that both the Konopka reference and the Freiburger reference fail to teach "displaying the instructional information in a random pattern on one or more of the visual displays in response to the triggering event, wherein the random pattern comprises displaying the instructional information in a random sequence wherein the instructional information moves from one combination of one or more of the visual displays to

another combination of one or more of the visual displays at a random interval, wherein a combination of the one or more visual displays comprises a number of the visual displays less than all of the visual displays” as recited in independent Claim 1 with similar recitations in independent Claims 59 and 67.

The Gaussian probability function of Freiburger does not read on the claimed invention.

The Answer argues two conflicting points with regard to the Freiburger reference, arguing simultaneously that Freiburger teaches that “specifically selected images provide the background pictures for idle or transition periods,” as taught in Appellant’s Specification, and that the content of Freiburger is not specifically selected, but is randomly selected by a Gaussian probability function. Answer at pgs. 18-19.

Even if either or both of the Answer’s conflicting assertions were true, they do not read on the claimed invention, which specifically requires that instructional information be displayed in a random pattern that comprises displaying the instructional information in a random sequence and moving the instructional material from one combination of visual displays to another combination of visual displays at a random interval. Even if the Freiburger reference did teach random selection of display material, which it does not, the claims at issue specifically recite “displaying instructional information selected by the operator until a triggering event” and in response to the triggering event, displaying the instructional information in a random pattern, in a random sequence, moving from one combination of visual displays to another at a random interval. Randomly selecting material to display does not render the claimed invention obvious, in fact, it directly teaches away from the claimed invention, which clearly recites that the “instructional information [is] selected by the operator.”

Additionally, although the Answer suggests otherwise, the Freiburger reference does not even teach the random selection of display material, much less displaying operator selected instructional information in a random pattern, in a random sequence, moving from one combination of visual displays to another at a random interval. Answer at pgs. 19-20. The Answer suggests that the Freiburger reference’s Gaussian probability function, which selects content packages for display based on “a user’s preference for a particular set of content data,” is somehow random. Freiburger at col. 26, l. 52 – col. 27, l. 15; Answer at pg. 19.

A Gaussian probability function, despite what the Answer suggests, is simply a normal bell curve. While a Gaussian probability function may receive a random input, the entire purpose of the function is to normalize or standardize the output such that it is not random, but normal. One simple example of how a Gaussian function works is a curved grading system. Although initial scores may be somewhat random, the entire purpose of the Gaussian function is to standardize or normalize the grades based on the Gaussian bell curve so that they are no longer random, but structured according to the Gaussian function.

Like a curved grading system, the Freiburger reference clearly teaches that the selection of content packages is not random, but instead uses a Gaussian probability function that is based on “a user’s preference for a particular set of content data,” on “content display system scheduling instructions,” and “according to other criteria.” Freiburger at col. 26, l. 52 – col. 27, l. 15. This structured selection of content packages that are to be displayed ensures that content data is displayed in a standardized, normalized manner based on a user’s preference, and is clearly not random. The entire purpose of the content display system scheduling instructions taught in the Freiburger reference is to prevent the random selection of content by instead normalizing the selected content to conform to user preferences for the content. Furthermore, even if the structured content selection taught in the Freiburger reference were random, and not based on user preferences and a normal bell curve, it would not render obvious the displaying of operator selected instructional information in a random pattern, in a random sequence, moving from one combination of visual displays to another at a random interval as recited in the claimed invention.

Appellant’s Specification teaches that instructor and student images are background images.

The Answer further suggests that Appellant’s Specification teaches that “instructional content encompasses images of the instructor’s face and students’ images from a camera,” which are the focus of the distance learning system in the Konopka reference, and are therefore instructional material as recited in the claims at issue. Answer at pgs. 17-18. The portion of the Specification cited in the Answer, however, (“page 12, line 16 through page 13, line 2”), deals with the background images and background information recited in the claims at issue, and is even cited in the Answer as describing the background images. Answer at pg. 18.

Taken in context, the cited portion of the Specification states that “specifically selected images provide the background pictures for idle or transition periods when no other activity on the screens is present. Time limits for duration in which displaying each kind of image, such as instructor’s face, students’ image or other info, are build into the software to allow maximum effectiveness without unwanted distraction from the core educational aspect of the lesson.” Specification at pg. 12, ll. 21-26. These student and instructor images are the background images in the claims at issue, and are “displayed and replaced” “on one or more visual displays not displaying instructional information” to enhance effectiveness of the instructional information. See Claim 1. Video of a teacher and of remote students, however, is the focus of the Konopka reference, which is “directed to a video distance learning classroom system which facilitates virtual eye contact between a teacher...and students in one or more remote locations.” Konopka at col. 3, ll. 26-29. The Answer’s assertion is clearly false given the plain language of the claims and the Specification.

The Konopka reference does not teach displaying teaching images on all displays.

The Answer further suggests that “it is plausible for Konopka to display teaching documents on all the displays if a teacher so desired.” Answer at pg. 17. The Konopka reference, however, clearly states that such a “teaching image” or “auxiliary display” “could be displayed on one monitor” and that even then, the display should only be done “temporarily,” clearly teaching away from the Answer’s suggestion. Konopka, col. 4, ll. 24-30. The Konopka reference repeatedly emphasizes the importance of “face-to-face interactive communication,” “allowing the teacher to establish virtual eye contact with students,” and allowing “teachers and students to see, hear, and interact with one another.” Konopka at col. 3, ll. 10-22, 26-29, col. 5, ll. 16-50. For these reasons, the Konopka reference clearly teaches away from using anything other than one monitor, and that only temporarily, for displaying a “teaching image,” so that the face-to-face, virtual eye contact interaction is not interrupted.

The CODEC machine of Konopka is not a personal computer.

The Answer also suggests that “Konopka’s CODEC machine is a personal computer-based system” and that it is therefore “reasonable to consider merely installing software” on the CODEC machine as obvious. Answer at pg. 17. Appellant respectfully disagrees, and submits

that the CODEC machine taught in the Konopka reference is a specialized video and audio processing device, upon which one cannot merely install software. The Konopka reference teaches that “a CODEC machine located in each classroom converts the digital information from the fiberoptic network into video and audio signals which are then broadcast in the classrooms by monitors.” Konopka at col. 3, l. 65 – col. 4, l. 3.

A CODEC machine, as used in Konopka and as known in the art of audio and video broadcasting at the time of the invention, is a specialized device that translates analog video and audio signals into a telephonic digital format for transmitting over fiber optic telephone lines, and that retranslates the signals back into analog format for viewing on conventional monitors. Nowhere does the Konopka reference teach or suggest that the specialized CODEC machine is a personal computer-based system that it is configurable, or that one may install software on the highly task-specific, specialized machine. One cannot merely install screensaver or wallpaper software on a CODEC machine, nor would a CODEC machine with an informational screensaver or wallpaper read on the claims at issue or render them obvious even if such an incompatible combination were possible, as the Answer suggests.

Konopka does not teach using a single computer to run multiple displays.

The Answer goes on to state that “Konopka clearly uses one single computer to run multiple displays” suggesting that the invention would be obvious to “a routineer in the art of computer programming” for that reason. Answer at pg. 20. The paragraph from the Konopka reference that the Answer cites states that “if the teacher is using a document camera or an auxiliary display device such as a computer or VCR, that image could be displayed on one monitor.” Konopka at col. 4, ll. 24-30. What the Konopka reference clearly does teach, as described above, is that a teacher may temporarily display the output of an auxiliary display device such as a computer or VCR on one monitor, if the teacher is using such a device, not that a single computer runs multiple displays. The computer taught in the Konopka reference is simply an auxiliary display device that a teacher may use on a single monitor and does not “run multiple displays” as the Answer suggests. The other reference to a computer in the Konopka reference is to a “personal computer...for interfacing with the network to schedule available classroom sessions.” Konopka at Abstract, col. 8, ll. 40-42.

II. Konopka and Freiburger teach away from the claimed invention and destroy utility.

The Answer's suggestion that the Konopka and Freiburger references do not teach away from the claimed invention, and that a combination of the references does not destroy the utility of Konopka ignores the direct teaching away found in the Konopka reference, and the clear intended purpose of the Konopka reference. Answer at pg. 21. Instead of addressing the clear language of the references, the Answer merely describes the "highly beneficial" nature of such a combination, interpreted in the Answer as yielding the claimed invention. Answer at pg. 21. The benefits of such a combination, however, are not relevant to a question of teaching away or of destroyed utility. As described above, the Konopka reference repeatedly emphasizes the importance of "face-to-face interactive communication," "allowing the teacher to establish virtual eye contact with students," and allowing "teachers and students to see, hear, and interact with one another." Konopka at col. 3, ll. 10-22, 26-29, col. 5, ll. 16-50. The Konopka reference expressly teaches that:

The video distance learning system of the present invention facilitates eye contact between the teacher in a teaching classroom and students in one or more remote classrooms. During a discussion between the teacher in the teaching classroom and a student in a remote classroom, the teacher will be looking directly at the camera a monitor located in the rear of the room displaying a video image of the remote student classroom. The camera focused on the teacher is located in close proximity to that monitor. The student in the remote classroom will be looking directly at the monitor displaying a video image of the teacher in the teaching classroom. The camera focused on the student is located in close proximity to the instructor monitor. The close proximity of the receiving camera to the display monitor greatly facilitates increased sense of eye contact is possible between the teacher in the teaching classroom and a student in a remote classroom. This arrangement of "virtual" eye contact is possible because of the relationship between focal area of the eyes (monitor location) and the location of the camera. Thus, the student and the teacher will perceive a true rendering of a face to face conversation.

Konopka at col. 5, ll. 30-50.

As a teacher is focused directly on the display of a student from a remote classroom, and a student is focused directly on the display of the teacher, eyes meeting in a "true rendering of a face to face conversation" as taught by Konopka, the sudden display of screensaver or wallpaper content on the display, such as "MTV music segments...or news summaries" as taught by

Freiberger, would be absurd and would clearly destroy the utility of the Konopka reference, destroying the “true rendering of a face to face conversation” in a most extreme manner. Answer at pg. 21; Konopka at col. 5, ll. 49-50; Freiberger at col. 7, ll. 32-35.

The Answer further ignores the clear statement in the Konopka reference that a “teaching image” or “an auxiliary display device” should only “be displayed on one monitor” and that even that should only be done “temporarily.” Konopka at col. 4, ll. 24-30. This clear statement completely teaches away from the claimed invention, which recites that “the instructional information moves from one combination of one or more of the visual displays to another combination of one or more of the visual displays at a random interval,” necessarily involving more than “one monitor” as it moves between combinations of visual displays at a random interval. Claims 1, 59, 67.

The Konopka reference clearly teaches away from any combination with the Freiberger reference, such a combination would destroy the utility of the Konopka reference, and even if such a combination were to be made, it would not lead to the claimed invention, as described above and in the Appeal Brief.

11. RELATED PROCEEDINGS APPENDIX

There is no material to be included in the Related Proceedings Appendix, and the Examiner did not identify a decision rendered by a court or the Board in the Answer.

12. EVIDENCE APPENDIX

There is no material to be included in the Evidence Appendix.

SUMMARY

In view of the foregoing, Appellant respectfully asserts that each of the claims on appeal has been improperly rejected because the rejections under 35 U.S.C. §103(a) are improper. Therefore, Appellant respectfully requests reversal of the Examiner's rejections under 35 U.S.C. §103(a), and urges that pending Claims 1-4, 7, 11, 12, and 42-78 are ready for prompt allowance. Appellant appeals to the Board's objective and reasoned decision on this matter.

Respectfully submitted,

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